IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.288 OF 2005

Mohd. Salim Ali Ahmed	...	Appellant
Vs.		
Bombay Municipal Corporation of Greater Bombay.	...	Respondent

Mr. P.K. Dhakephalkar for the appellant.

Mr. J. Xavier for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 18TH FEBRUARY, 2005.

P.C.:-

1. Admit. By consent of parties, taken up for final hearing, forthwith.

2. The appellant had challenged in this appeal the judgment and decree dated 18/12/2004 passed by the City Civil Court at Bombay in L.C. Suit No.3324 of 1989. In that suit, a notice issued by the defendant-Corporation dated 12/4/1989 under section 351 of the Bombay Municipal Corporation Act was challenged. The said suit was dismissed and, hence, this appeal.

3. I have heard Mr. Dhakephalkar, the learned counsel appearing for the appellant and Mr. Xavier, the learned

counsel appearing for the respondent. Mr. Dhakephalkar pointed out that the defendant-Corporation has not filed its written statement in the trial court. He stated that no doubt, the defendant had adduced evidence. However, the learned judge has observed in his judgment that the defendant's evidence is not upto the mark. The learned judge has further observed that as held by this court in its judgment passed in **A.O. No.92 of 1996 in Notice of Motion No.593 of 1996 in S.C. Suit No.483 of 1996 delivered by Justice P.S. Patankar on 29/8/1996**, the affidavit in reply cannot be treated as a written statement. Mr. Dhakephalkar urged that in view of this, the trial court could not have non-suited the plaintiff particularly when the plaintiff had adduced cogent and credible evidence to establish that the structure in question is authorised.

4. Mr. Xavier, the learned counsel for the defendant-Corporation submitted that the written statement was not filed by the defendant-corporation because the defendant had submitted its reply to the notice of motion taken out by the plaintiff dated 16/9/1992. The trial court had passed an order treating the said affidavit in reply dated 16/9/1992 as written statement. He submitted that in any case, since the later observation made by this court indicates that the court has not treated it as a written statement, the matter may be remanded to the trial court to enable the defendant-corporation to file its written statement and

the trial court may be directed to decide the suit in a time frame laid down by this court. In the circumstances of the case, in my opinion, such an order would meet the ends of justice. Hence, I pass the following order.

5. The impugned judgment and decree dated 18/12/2004 passed by the Bombay City Civil Court in L.C. Suit No.3324 of 1989 is set aside. The defendant is directed to file its written statement within a period of eight weeks from today. The trial court is directed to take it on file. The trial court is directed to decide the L.C. Suit No.3324 of 1989 after giving an opportunity to the plaintiff and the defendant to lead necessary evidence. The trial court shall hear and dispose of this suit within a period of six weeks from the date of receipt of this order by it. Needless to say that till such time, as the suit is decided, the defendant-corporation shall not take any action pursuant to the impugned notice. Parties to appear before the trial court on 4/3/2005.

Appeal disposed of in the aforestated terms.

6. In view of this, the civil application is also disposed of.

7. All concerned to act on the authenticated copy of this order.

(SMT. RANJANA DESAI, J.)